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SERVICE DATE – SEPTEMBER 22, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34694 (Sub-No. 1)

UNION PACIFIC RAILROAD COMPANY– TEMPORARY TRACKAGE RIGHTS EXEMPTION– BNSF RAILWAY COMPANY

Decided: September 15, 2005

By petition filed on April 26, 2005, Union Pacific Railroad Company (UP) requests that the Board partially revoke the class exemption to permit the trackage rights arrangement exempted in STB Finance Docket No. 34694¹ to expire on or about December 31, 2005.

UP states in its petition that the purpose of the trackage rights arrangement exempted in STB Finance Docket No. 34694 is to permit UP to move loaded and empty ballast trains for use in its maintenance-of-way (MOW) projects. Thus, UP sought, and BNSF was only willing to grant, temporary operating rights over BNSF's trackage until December 31, 2005.

DISCUSSION AND CONCLUSION

Although UP and BNSF have expressly agreed on the term of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption at 49 CFR 1180.2(d)(7) normally remain effective indefinitely, regardless of any durational contract provisions. Occasionally, trackage rights exemptions under section 1180.2(d)(7) have been permitted through Board action to extend only for a limited term rather than in perpetuity. See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34242 (Sub-No. 1) (STB served Oct. 7, 2002).

¹ On April 26, 2005, UP concurrently filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice, served and published in the Federal Register on May 16, 2005 (70 FR 25883), covered the agreement by BNSF Railway Company (BNSF) to grant temporary local trackage rights to UP over a BNSF line of railroad extending from BNSF milepost 11.3 in UP Junction, WA, to BNSF milepost 36.0 near Sprague, WA, a distance of approximately 24.7 miles. Because the temporary trackage rights are "local" rather than "overhead" rights, they did not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). The trackage rights operations under the exemption were scheduled to begin on May 3, 2005.

Under 49 U.S.C. 10502, we may exempt a person, class of persons, or a transaction or service, in whole or in part, when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

UP's temporary trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted, and will have no adverse impact on shippers on the line because the trackage rights that are the subject of the exemption are only for the movement of loaded and empty ballast trains for use in UP's MOW projects. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 34694 to expire on or about December 31, 2005.

The effect of this decision is to terminate the authorization for trackage rights conferred by our rule at 49 CFR 1180.2(d)(7). As noted, UP invoked that rule by notice on April 26, 2005. Because we are required to provide protection to any employee adversely affected by the discontinuance of trackage rights, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. 10502, the trackage rights described in STB Finance Docket No. 34694, are exempted, as discussed above, to permit the trackage rights to expire on or about December 31, 2005, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).
3. Notice will be published in the Federal Register on September 22, 2005.
4. This decision is effective on October 22, 2005.

5. Petitions to stay must be filed by October 3, 2005. Petitions to reopen must be filed by October 12, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary